

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

VIJUVE INC., a Florida corporation.,

Plaintiff,

vs.

KASPIEN INC., a Washington corporation,

Defendant.

Case No.

COMPLAINT

1 Plaintiff VIJUVE INC. hereby complains and alleges that Defendant KASPIEN
2 INC. has breached a contract between Vijuve and Kaspien for marketing and selling Vijuve's
3 skin-care products on the e-commerce platform Amazon.com. Vijuve further complains and
4 alleges that it has suffered substantial damages as a result of Kaspien's breach of the contract,
5 including damages to Vijuve's skin-care brand. Vijuve alleges as follows:

6 PARTIES

7 1. Plaintiff Vijuve is a corporation duly organized and existing under the laws of the
8 State of Florida, having its headquarters and principal place of business in Hollywood, Florida.

9 2. Defendant Kaspien is a corporation duly organized and existing under the laws of
10 the State of Washington, having its headquarters and principal place of business in Spokane
11 Valley, Washington.

12 JURISDICTION AND VENUE

13 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
14 1332 because complete diversity exists between the parties and because the amount at issue
15 exceeds \$75,000.

16 4. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391(b) because a
17 substantial part of the events or omissions giving rise to Vijuve's claims occurred in this judicial
18 district and because the contract between the parties, attached hereto as **Exhibit 1**, contains a
19 forum selection clause mandating disputes arising out of the contract be resolved in Spokane,
20 Washington.

21 FACTUAL BACKGROUND

22 The Contract

23 5. On or about September 18, 2020, Vijuve and Kaspien entered into a contract (the
24 "Contract") (**Exhibit 1**) for jointly marketing and selling Vijuve's skin care products.

25 6. Vijuve and Kaspien agreed Kaspien would market these products on
26 Amazon.com and Vijuve would market Vijuve's Face Massager and Serum skin-care products

1 outside Amazon.com. This arrangement was intended to increase sales velocity of those
2 products.

3 7. Under the Contract, Vijuve appointed Kaspien as an exclusive authorized retailer
4 of Vijuve's products required to sell Vijuve's skin-care products on Amazon.com

5 8. Under the contract, Vijuve granted Kaspien a non-exclusive, non-transferable,
6 non-sublicensable license of Vijuve's trademark rights for marketing and reselling Vijuve's skin-
7 care products pursuant to the terms of the Contract.

8 9. Vijuve and Kaspien added a "Partnership Details Addendum" to the Contract to
9 govern the terms and conditions of Kaspien's contractual obligations regarding the marketing
10 and selling of Vijuve's skin-care products. This Partnership Details Addendum was incorporated
11 into the Contract itself (**Exhibit 1**).

12 10. Under the Partnership Details Addendum, Vijuve granted Kaspien the exclusive
13 right to sell Vijuve's Face Massager and Serum products on Amazon.com.

14 11. Section 2 of the Partnership Details Addendum, "Minimum Order Requirement,"
15 required Kaspien place orders for Vijuve's Face Massager and Serum products under certain
16 circumstances.

17 12. Section 2 of the Partnership Details Addendum also required Kaspien place orders
18 for Vijuve's Face Massager and Serum skin-care if Kaspien's stock of those products fell below
19 the prior two weeks' sales velocity, as defined in Row 3, Exhibit A, of the Partnership Details
20 Addendum.

21 **Kaspien Breached the Contract**

22 13. On or about September 28, 2020, after execution of the Contract, Vijuve and
23 Kaspien embarked on a campaign to market and sell Vijuve's Face Massager and Serum skin-
24 care products. Kaspien placed a purchase order as required by the Contract.

25 14. On or about January 25th, 2021, Vijuve and Kaspien embarked on a second
26 campaign to market and sell Vijuve's Face Massager and Serum skin-care products.

1 15. Row 3 of Exhibit A of the Partnership Details Addendum required Kaspien
2 submit a purchase order for Vijuve's Face Massager and Serum skin-care products on or before
3 February 8, 2021 because Kaspien's stock of these products fell below the prior two weeks' sales
4 velocity during that time.

5 16. Pursuant to Row 3 of Exhibit A to the Partnership Details Addendum, Kaspien
6 was required to purchase \$774,000 of Vijuve products on or before February 8, 2021.

7 17. Kaspien failed to make this purchase as required under the Contract.

8 18. Vijuve demanded Kaspien make this \$774,000 purchase required under the
9 Contract, but Kaspien refused, thereby breaching the contract. A true and correct copy of a letter
10 sent on behalf of Vijuve demanding Kaspien make this purchase is attached hereto as **Exhibit 2**.

11 19. Instead of making its required \$774,000 purchase, Kaspien attempted to
12 renegotiate the terms of the Contract with Vijuve.

13 20. Vijuve rejected Kaspien's attempts to renegotiate the Contract and again
14 demanded Kaspien fulfill its contractual obligations by making the \$774,000 purchase.

15 21. Kaspien refuses to perform its purchase obligations under the Contract, though on
16 information and belief it continues to act as though it is an authorized retailer of Vijuve's
17 products on Amazon from time to time. Attached hereto as **Exhibit 3** is a June 7, 2021
18 screenshot from Amazon showing this.

19 22. Kaspien breached its contractual obligation by failing to purchase and pay for
20 \$774,000 in products from Vijuve.

21 23. Paragraph 18 of the Contract provides that attorneys' fees and costs shall be
22 awarded to the prevailing party in any dispute between the parties over the Contract or its terms,
23 and that any such dispute shall be venued in Spokane, Washington.

24 **Vijuve's Damages from Kaspien's Contract Breach**

25 24. Kaspien's failure to make and pay for its required purchases under the contract
26 has caused Vijuve to incur \$774,000 in damages.

25. As a result of Kaspien's breach of the Contract, Vijuve has suffered additional damages in an amount to be proven at trial for revenue it has not received but would have received but for Kaspien's breach of contract, and for damages to the Vijuve brand as a result of the breach of the Contract.

BREACH OF CONTRACT CAUSE OF ACTION

26. Plaintiff realleges and incorporates Paragraphs 1-25 as if fully set forth herein.

27. The Contract is a valid contract between Vijuve and Kaspien.

28. The Contract imposed and still imposes certain duties and obligations on Kaspien.

29. Kaspien has breached its contractual duties by, among other things, failing to perform as required by the Contract.

30. Kaspien has breached its contractual duties by, among other things, failing to make the required \$774,000 purchase of Vijuve's Face Massager and Serum skin-care products.

31. Vijuve has performed all obligations imposed on it under the Contract or has been excused from performance by Kaspien's breach of the Contract.

32. As a proximate result of Kaspien's breach of the Contract, Vijuve has suffered actual damages \$774,000 in actual damages, exclusive of costs and interest, and additional special damages to be proven at trial.

RELIEF REQUESTED

WHEREFORE, Vijuve requests this Court:

- (a) Enter judgment in favor of Vijuve against Kaspien;
- (b) Enter judgment awarding Vijuve \$774,000 in actual damages;
- (c) Enter judgment for additional damages incurred by Vijuve in an amount to be proven at trial;
- (d) Award Vijuve interest accruing at the statutory rate of 12% per annum;
- (e) Award Vijuve its attorneys' fees and costs, and all other litigation expenses; and
- (f) Award such additional relief as the Court deems just and equitable.

1
2 DATED this 18th day of June, 2021.
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